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09/737,050	12/14/2000	Christopher Tate	583-1044	7139

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EXAMINER

SHELEHEDA, JAMES R

ART UNIT PAPER NUMBER

2617

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/737,050

Applicant(s)

TATE ET AL.

Examiner

James Sheleheda

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-11, 13-15, 17-19, 21-23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 13-15, 17-19, 21-23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 10, 12, 14, 18, 20, 22 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (Hendricks) (6,201,536) (of record) in view of Hodge et al. (Hodge) (6,564,381).

As to claim 1, while Hendricks discloses a system for streaming data (Fig. 1) comprising: a **content providing server** (operations center, 202) capable of storing content and communicating the content (column 8, lines 8-54) to at least a first and second client terminator unit (set top terminals, 220) via a communications network (concatenated cable system, 210; column 7, lines 1-3 and column 8, line 65-column 9, line 3), and

a **distribution server** (Headend, 208) coupled in-line between the content providing server and the at least first and second client terminator units (see Fig. 1),

wherein the distribution server is arranged to **generate** at least a first and a second onward data stream (staggered streams of a single program; column 34, lines 32-59) and **transmit** the at least the first and second onward data streams (column 34, lines 32-59) to the at least the first and second client terminator units, respectively

(transmitted to the subscribers who will receive the program at that start time; column 34, lines 39-59), in response to control data (column 8, lines 31-44) and an incoming data stream received or being received from the content providing server and corresponding to the content (program package signals; column 8, lines 8-30 and 44-54),

wherein the at least first and second onward data streams **correspond** substantially to the content (column 8, line 65-column 9, line 3 and column 34, lines 32-59) and are **offset** in time with respect to each other by a respective offset value (column 34, lines 31-39) indicated in the control data (schedule indicating staggered start times; column 8, lines 31-43 and column 34, lines 31-39 and lines 47-59), he fails to specifically disclose communicating content in response to requests for the content.

In an analogous art, Hodge discloses a video distribution system (Fig. 2; column 3, lines 21-51) wherein a super hub controller (13) will determine when content is to be distributed in response to requests for the content (requests by motion picture studios as to how and when the content is to be distributed; column 4, line 64-column 5, line 11) for the typical benefit of ensuring maximum revenue distribution from broadcast video programs (column 3, lines 40-51).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendrick's system to include communicating content in response to requests for the content, as taught by Hodge, for the typical benefit of ensuring maximum revenue distribution from broadcast video programs.

As to claim 10, while Hendricks discloses a method of streaming data (Fig. 1) between a content providing server (operations center, 202) and at least a first and second client terminator unit (set top terminals, 220), the method comprising:

receiving at a **distribution server** (Headend, 208) control data (column 8, lines 31-44) and an incoming data stream corresponding to content (program package signals; column 8, lines 8-30 and 44-54), the incoming data stream being received from the content providing server (column 8, lines 8-30 and 44-54),

in response, generating at least a first and second onward data streams (staggered streams of a single received program; column 34, lines 32-59), and

transmitting the at least the first and second onward data streams (column 34, lines 32-59) to the at least the first and second client terminator units, respectively (transmitted to the subscribers who will receive the program at that start time; column 34, lines 39-59), in response to the incoming data stream (in response to receiving the program from the operations center; column 8, lines 8-30 and 44-54);

wherein the at least first and second onward data streams **correspond** substantially to the content (column 8, line 65-column 9, line 3 and column 34, lines 32-59) and are **offset** in time with respect to each other by a respective offset value (column 34, lines 31-39) indicated in the control data (schedule indicating staggered start times; column 8, lines 31-43 and column 34, lines 31-39 and lines 47-59), he fails to specifically disclose communicating content in response to requests for the content.

In an analogous art, Hodge discloses a video distribution system (Fig. 2; column 3, lines 21-51) wherein a super hub controller (13) will determine when content is to be

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distributed in response to requests for the content (requests by motion picture studios as to how and when the content is to be distributed; column 4, line 64-column 5, line 11) for the typical benefit of ensuring maximum revenue distribution from broadcast video programs (column 3, lines 40-51).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendrick's system to include communicating content in response to requests for the content, as taught by Hodge, for the typical benefit of ensuring maximum revenue distribution from broadcast video programs.

As to claims 14, 18 and 22, while Hendricks discloses a programmed computer (network manager, 214) for streaming data (Fig. 1) between a content providing server (operations center, 202) and at least a first and second client terminator unit (set top terminals, 220), comprising memory having at least one region for storing computer executable program code (Fig. 3; column 11, lines 14-29) and

a processor for executing the program code stored in memory (column 11, lines 21-29), wherein the program code includes:

code to receive control data (column 8, lines 31-44) and an incoming data stream corresponding to content (program package signals; column 8, lines 8-30 and 44-54), the incoming data stream being received from the content providing server (column 8, lines 8-30 and 44-54),

code to generate, in response to the received control data and incoming data stream received or being received (in response to receiving the program from the

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operations center; column 8, lines 8-30 and 44-54) at least a first and second onward data streams (staggered streams of a single received program; column 34, lines 32-59), and

code to transmit in response to the received control data and incoming data stream received or being received (in response to receiving the program from the operations center; column 8, lines 8-30 and 44-54), the at least the first and second onward data streams (column 34, lines 32-59) to the at least the first and second client terminator units, respectively (transmitted to the subscribers who will receive the program at that start time; column 34, lines 39-59),

wherein the at least first and second onward data streams **correspond** substantially to the content (column 8, line 65-column 9, line 3 and column 34, lines 32-59) and are **offset** in time with respect to each other by a respective offset value (column 34, lines 31-39) indicated in the control data (schedule indicating staggered start times; column 8, lines 31-43 and column 34, lines 31-39 and lines 47-59), he fails to specifically disclose communicating content in response to requests for the content.

In an analogous art, Hodge discloses a video distribution system (Fig. 2; column 3, lines 21-51) wherein a super hub controller (13) will determine when content is to be distributed in response to requests for the content (requests by motion picture studios as to how and when the content is to be distributed; column 4, line 64-column 5, line 11) for the typical benefit of ensuring maximum revenue distribution from broadcast video programs (column 3, lines 40-51).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendrick's system to include communicating content in response to requests for the content, as taught by Hodge, for the typical benefit of ensuring maximum revenue distribution from broadcast video programs.

As to claims 3, 12, 16, 20 and 24, Hendricks and Hodge disclose wherein the offset value is provided by the content providing server (wherein Operations center indicates the start times of the program streams; see Hendricks at column 8, lines 31-44 and column 34, lines 32-39).

3. Claims 2, 11, 15, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks and Hodge as applied to claims 1, 10, 14, 18 and 22 above, and further in view of Debey (5,701,582) (of record).

As to claims 2, 11, 15, 19 and 23, while Hendricks and Hodge disclose the generating of first and second onward data streams, they fail to specifically disclose wherein data streams are generated prior to receipt of all of the incoming data stream.

Debey discloses the transmission of digital programming streams (column 14, lines 22-36), received at A/V digitizing units, (72 in Fig. 7A, column 13 lines 64-67 and column 14, lines 1-21), which are generated prior to receipt of all of an incoming data stream (column 14, lines 22-36), for the typical advantage of transmitting live television feeds to viewers as they are received.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendricks and Hodge's system to include wherein data streams are generated prior to receipt of all of the incoming data stream, as taught by Debey, for the typical advantage of transmitting live television feeds to viewers as they are received.

4. Claims 4, 13, 17, 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks and Hodge as applied to claims 1, 10, 14, 18 and 22 above, and further in view of Ganek (5,724,646) (of record).

As to claims 4, 13, 17, 21 and 25, while Hendricks and Hodge disclose wherein a processor is arranged to transmit a plurality of data streams with an offset value, they fail to specifically disclose wherein the first data stream loops at least once.

In an analogous art, Ganek discloses a near video on demand system where a program continuously transmits (loops) over a primary channel (Fig. 5b, column 1, lines 55-60) for the typical advantage of providing the video programming for an extended period of time.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendricks and Hodge's to include wherein the first data stream loops at least once, as taught by Ganek, for the typical advantage of providing the video programming for an extended period of time.

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5. Claims 5, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks in view of Hodge and Fluss (6,304,578) (of record).

As to claim 5, while Hendricks discloses a multicast server for streaming data (Headend, 208), comprising a processor unit (column 11, lines 21-29) coupled to a storage device (file server, 215),

the processor unit being arranged to receive control data (column 8, lines 31-44) and an incoming data stream corresponding to content (program package signals; column 8, lines 8-30 and 44-54), the incoming data stream being received from a content providing server (operations center, 202; column 8, lines 8-54) and being arranged to store the content in the storage device (column 9, line 51-column 10, line 6),

wherein the processor unit is further arranged to generate at least a first and a second onward data streams (staggered streams of a single program; column 34, lines 32-59) for transmission to at least a first and second client terminator unit, respectively (transmitted to the subscriber set top terminals, 220 who will receive the program at that start time; column 34, lines 39-59), in response to the control data (column 8, lines 31-44) and incoming data stream (program package signals; column 8, lines 8-30 and 44-54),

wherein the at least first and second onward data streams correspond substantially to the content (column 8, line 65-column 9, line 3 and column 34, lines 32-59) and are **offset** in time with respect to each other by a respective offset value (column 34, lines 31-39) indicated in the control data (schedule indicating staggered

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start times; column 8, lines 31-43 and column 34, lines 31-39 and lines 47-59), he fails to specifically disclose communicating content in response to requests for the content and a router coupled to the processor.

In an analogous art, Hodge discloses a video distribution system (Fig. 2; column 3, lines 21-51) wherein a super hub controller (13) will determine when content is to be distributed in response to requests for the content (requests by motion picture studios as to how and when the content is to be distributed; column 4, line 64-column 5, line 11) for the typical benefit of ensuring maximum revenue distribution from broadcast video programs (column 3, lines 40-51).

Additionally, in an analogous art, Fluss discloses a video distribution system (Fig. 1) wherein a cable head end (103) will include a router (105; column 4, lines 32-39) for the typical benefit of routing data packets to the appropriate users (column 4, lines 16-20).

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendrick's system to include communicating content in response to requests for the content, as taught by Hodge, for the typical benefit of ensuring maximum revenue distribution from broadcast video programs.

Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendricks' system to include a router, as taught by Fluss, for the typical benefit of ensuring that data packets to be transmitted are correctly routed to the appropriate users.

As to claim 6, Hendricks, Hodge and Fluss disclose wherein the router is arranged to transmit the at least first and second onward data streams to the at least first and second recipient servers, respectively (wherein the router transmits each data packet to the respective user; see Fluss at column 4, lines 34-45).

As to claim 8, Hendricks, Hodge and Fluss disclose wherein the offset value is provided by the content providing server (wherein the scheduling control data is provided by the Operations Center; see Hendricks at column 8, lines 31-44).

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks, Hodge and Fluss as applied in claim 5 above, and further in view of Ganek.

As to claim 9, while Hendricks, Hodge and Fluss disclose wherein a processor is arranged to transmit a plurality of data streams with an offset value, they fail to specifically disclose wherein the first data stream loops at least once.

In an analogous art, Ganek discloses a near video on demand system (Fig. 1) where a program continuously transmits (loops) over a primary channel (Fig. 5b, column 1, lines 55-60) for the typical benefit advantage of providing the video programming for an extended period of time.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendricks, Hodge and Fluss' system to include wherein the first data stream loops at least once, as taught by Ganek, for the typical benefit of providing the video programming to viewers for an extended period of time.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks and Fluss as applied to claim 5 above, and further in view of Debey.

As to claim 5, while Hendricks, Hodge and Fluss disclose the generating of first and second onward data streams, they fail to specifically disclose wherein data streams are generated prior to receipt of all of the incoming data stream.

Debey discloses the transmission of digital programming streams (column 14, lines 22-36), received at A/V digitizing units, (72 in Fig. 7A, column 13 lines 64-67 and column 14, lines 1-21), which are generated prior to receipt of all of an incoming data stream (column 14, lines 22-36), for the typical advantage of transmitting live television feeds to viewers as they are received.

It would have been obvious to one of ordinary skill in the art at the time of invention by applicant to modify Hendricks, Hodge and Fluss' system to include wherein data streams are generated prior to receipt of all of the incoming data stream, as taught by Debey, for the typical advantage of transmitting live television feeds to viewers as they are received.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 5, 10, 14, 18 and 22, in regards to communicating content in response to requests for the content, have been considered but are moot in view of the new ground(s) of rejection.

9. Applicant's additional arguments filed 12/16/05 have been fully considered but they are not persuasive.

On page 8, applicant states that the operations content, 202, of Hendricks is not a server.

In response, Hendricks discloses an operation center which receives, digitizes, encodes, packages, schedules, and transmits programming to a plurality of remote sites across a network (see column 8, lines 8-64). By providing information to a plurality of other linked computers across a network, the operations center clearly qualifies as a "server". As applicant has provided no specific details, it is unclear how applicant feels that the operations center can somehow not be considered a server, this argument is not persuasive.

In response to applicant's arguments on page 8, in regards to communicating content in response to requests, see (8) above.

In response to applicant's arguments on page 9, that the headend, 208, cannot be equated to both the content providing server and the distribution server, it is noted that none of the rejections have ever attempted to correlate the headend, 208, to both the content providing and distribution servers. As shown in the previous action and above, it is the operations center, 202, which correlates to the content providing server.

On page 9, applicant argues that operations center, 202, does not transmit control data indicating offset values.

In response, Hendricks discloses wherein headend, 208, will transmit a plurality of video streams to user which have staggered (or offset) start times (column 34, lines 30-45). Furthermore, Hendricks **explicitly** states that the operations center dictates the **start times** of programs (column 8, lines 20-44). A program control signal indicating the program start times is transmitted from operations center to the headend (column 8, lines 31-54). The operations center clearly indicates the offset values to the headend, as the staggered NVOD start times are dictated by operations center.

On page 10, applicant argues that headend, 208, determines the staggering of streams in response to requests it receives.

In response, it is noted that the passage applicant quotes from Hendricks (column 34, lines 53-58) has absolutely nothing to do with **determining** the staggering of streams. The headend simply determines the **channel** with the next available staggered start time. This channel is then assigned to those subscribers who have recently requested the program. The described functions of the network manager are only in reference to assigning channels to subscribers, **based** upon the previously designated staggered start time for the channel. As clearly indicated above, it is the operations center, 202, which dictates the start times of programming.

In response to applicant's arguments, on pages 10 and 11, that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., conserving bandwidth between a content providing server and client terminator units) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On page 11, applicant argues that headend, 208 corresponds to the content providing server and not operations center, 202.

In response, operations center, 202 assembles and packages content for distribution to local headends (column 8, lines 8-54). This more than meets the claim limitation of a content providing server.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James Sheleheda
Patent Examiner
Art Unit 2617

JS


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